

14 January 2022

Final report by the Complaints Commissioner**Complaint number FCA001531***The complaint*

1. On 6 December 2021 you complained to me about the FCA's investigation of your complaint.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

My understanding of your complaint is that you recently received your invoice (xxxxxx) from the FCA for your annual fees, including back dated fees relating to introducers regulated by your firm – (Firm X). You have said your annual fee has increased and you are unhappy with the amount the fee has increased to which you feel is unfair. Your most recent fee totals to £23,625.

You have referenced the FCA's published annual fee cycle where the FCA stated that its commitment to divulging its proposed updates or changes to specific parts of the fees policy for the following year. This was published in November 2020 under consultation paper CP20/22. On page 16 under, "other charges" Point 2.3 you have highlighted that the FCA stated:

"We have decided not to introduce fees for other potential charges we considered: Appointed representatives (ARs): Dealing with notifications is not time-consuming and the costs would fall below the threshold of a category 1 charge of £250. The periodic fees of principal firms take account of the additional demands they impose on our supervisory

resources since they are charged on the basis of their own income plus the combined incomes of all their ARs.”

You feel this is contradictory to the FCA's current actions in relation to these fees as the FCA has admitted in November 2020 that the income generated by these introducers is already used to calculate firm's annual fee and this would effectively be “taxing” this income twice. You are unhappy that despite the FCA's commitment in November 2020 and in April 2021 consultation paper CP21/8 the FCA has defaulted on this decision and proposed to charge additional fees to be levied on each of your firm's appointed representatives. You have said that this was now subsequent to the date that the FCA were proposing to backdate the fees from, with no notice or opportunity for firms to review the income generated by their introducers, compared to the potential costs that the FCA were knowingly about to charge firms retrospectively.

You feel the FCA has acted unfairly in imposing these backdated fees as it knew the number of Introducer Appointed Representatives (IAR) your firm had. You do not agree that with the FCA's statement that it 'considers the cost per AR is minimal' when it is charged retrospectively and applies to 315 introducers whom your firm have no chance of charging retrospectively. Since you were informed of the FCA's intention you have consulted with your introducers and reduced this number to 55. You have said 55 x £75 would be a lot more manageable for a small company that has suffered tremendously during the last 18 months and is relying on loans backed by the government to survive and protect jobs.

To summarise this aspect of your complaint, you are unhappy that the FCA have chosen to deviate from its published annual fees consultation cycle and renege on its published commitment to not charge these specific fees.

Part Two

You have said that you were informed by the FCA's helpdesk, which is known as the FCA's Supervision Hub (the Hub) (call ref xxxxx), that the FCA will not be back-dating the charge and that it wasn't starting until November and that the £75 charge would be for registering a new IAR. You are unhappy that you have now been presented with an additional invoice for £23,625 which includes backdated fees.

You therefore want to complain about the retrospective nature of this new fee and the advice you were given by the Hub in July 2021.

You have also stated that you were only recently advised that the FCA has a backlog for adding any new introducers to a firm's license or making amendments, which will mean it may take up to six months to complete. You have questioned how this could be correct when the FCA is attempting to charge extra for this service?

Remedy

In order to resolve your complaint, you are seeking a credit of £23,625, relating to your recent invoice number (xxxxxx) and the disproportionately sized fee relating to the number of IARs that were on your license as of the 1 April 2021.

What the regulator decided

3. The FCA excluded part one of your complaint and partially upheld part two, they advised you:

Our response to Part One of your complaint

Paragraph 3.4(c) of the Scheme explains that this type of complaint is excluded from the Scheme. This is because your complaint relates to the performance of the regulators' legislative functions as defined in the Financial Services Act 2012 (including making rules and issuing codes and general guidance).

Although I have not investigated your complaint formally under the Scheme, I have liaised with the area of the FCA most closely connected to your complaint in order to provide you with a response to the matters raised.

The FCA is funded entirely through fees from the firms it regulates and receives no government grants or other subsidies. We set fees to recover costs and not to influence policy.

As outlined in our consultation paper, CP21/8: FCA regulated fees and levies: rates proposals 2021/22, recent thematic reviews and a subsequent call for input identified significant concerns over how the appointed representative (AR) regime works in different sectors. We are therefore beginning a programme of work to give greater scrutiny to the AR model, including proactive and targeted supervision. The programme will be funded by AR and introducer AR fees, which are set at a flat rate of £75 per IAR and £250 per AR. While we appreciate that some firms will pay higher fees than anticipated, overall, we feel that this fee model is the best way to distribute the costs among principal firms. Further details on this decision can be found in our policy statement PS21/7: FCA regulated fees and levies 2021/22.

Decision

For ease of reference, I have provided my findings under separate subsections for Part Two. My letter explains, below, that I have not upheld Part Two (i) and Two (iii) but have upheld Part Two (ii) of your complaint.

Background

In reaching my decision, I reviewed the case progression notes, emails on file, any applicable telephone recordings and considered their guidance and related actions.

On 22 July 2021, you contacted the Supervision Hub (the Hub), as you had received guidance from your own Compliance Advisor, that the FCA were proposing to charge additional fees for each Introduce Appointed Representative (IAR) on a firm's licence. You were wanting to know whether this would be implemented for new IARs, or retrospectively applied to existing IARs going forward. The Supervisor provided guidance and referred you to the Consultation Policy Statement PS21/7. Within this statement, you were guided to Page 58,

Section A22, regarding the Band Width and Fee for Appointed Representatives.

The Supervisor then suggested that it was their understanding the Policy "May" be implemented in November and that the proposed additional fee for IARs, which in your case was £75, was for new IARs and that it would not be backdated. Although, the Supervisor did indicate that his understanding was based purely on their summary research during the call and more information would be available closer to the time. The Supervisor then stated that if further advice was required at a later stage, to call back quoting the above case reference and the Hub would be happy to review and liaise with the applicable Policy Team.

Findings

In consideration, I have reflected over the above timeline and liaised with the Finance Team to gain their understanding on the fee, why it was issued and considered the relevant policy guidance.

Part Two

(i) Retrospective nature of the new fee

As I understand, your Firm was issued the following invoice of £30,516.84, with a payment due date of 8 October 2021.

The policy statement PS21/7, sets out the FCA fee rates for 2021/22, so was effectively implemented immediately. Both the policy statement and the consultation paper CP21/8, which preceded it, sets out the proposed fee and that it would be based on the number of IARs and ARs at the beginning of the fee year (1 April).

As the above invoice explained and in accordance with the above Policy Statements, your firm was charged for all the IARs registered on 1 April 2021. This is referred to on Page 3 of the invoice, whereby in accordance with the Tariff data of 316 IARs, you were charged a net fee of £23,626.00.

The fee for an IAR is £75, which has not been backdated in that it applies for this current fee year, rather than any historical periods. However, as the assessment date is 1 April, the fee is based on data that may become outdated as your firm's AR/IAR population changes.

It is my view that the concerned invoice was issued correctly and in accordance with the relevant policy guidance. I am therefore unable to consider a refund of the fee and cannot uphold this part of your complaint.

Part Two

(ii) Guidance given by the Hub

It is my view, having reviewed the recording of the call you had with the Hub, that the Supervisor should have engaged with the relevant Areas. I have noted that the Hub Supervisor did conclude that their understanding of the document being referenced, that is PS21/7, was after summary research during the call and more information would be available "closer to the time". The Supervisor also suggested that you read the document as a good "starting point".

However, it is my view that errors were identified during the above call, which may have avoided any potential misunderstandings. These are below:

- Policy Statement PS21/7, in accordance with guidance received by the Finance Team, was effectively implemented immediately. This is contrary to the advice you received during the call, which suggested an implementation date of November. Whilst I can appreciate that the Supervisor did imply this was his understanding, guidance given by Supervisors should not be based on suggestive understanding. It is my view that the Supervisor should have gained the relevant information from Policy teams and provided a response to you once conclusive information had been gained.
- The Supervisor also provided suggestive guidance in that it was his understanding the fee for IARs was for new applications and that it would not be backdated. Again, whilst the Supervisor did indicate

during the call that his understanding was based on summary research during the call and that more information would be available closer to the time, it is my view that this provided an unnecessary misunderstanding to the matter and the Supervisor should have applied the same approach as stated above or avoided giving a personal opinion on the guidance, when unsure and requested that you sought independent advice.

- For this reason, I have upheld this part of your complaint.

Part Two

(iii) Appointed Representatives (AR)/IAR Backlog and Fee

I have liaised with the relevant team responsible for the above and haven't seen any evidence suggestive of a backlog of six months being in place.

Principal firms charge ARs for the services they provide. The FCA understands that Principal firms include in these charges the recovery of their FCA fees as well as other fees they pay for the Financial Services Compensation Scheme (FSCS), FOS, MaPS etc. Some Principal firm respondents commented that they are less likely to be able to pass on the £250 AR fee in the introducer business model. The FCA believed that the reduced IAR fee of £75 will mean that Principal firms would be more able to pass on, or absorb, the lower fee. IARs registered with the FCA can provide a level of financial services to consumers as part of wider holistic services. The FCA, on this basis, do not believe the payment of £75 to enable them to do so is unreasonable.

Therefore, in consideration, the fee of £75 is a standardised regulatory fee charged by the FCA to applicable firms. The fee is not an additional charge to fast-track applications or amendments. I am therefore unable to uphold this part of your complaint.

Conclusions

For these reasons set out above, I have partially upheld your complaint.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. You are unhappy the FCA have charged you for 315 IFA's retrospectively without any warning and following information you were provided by the Helpdesk (Supervision Hub), when you called in July 2021. Furthermore, you do not agree part one of your complaint should be excluded from the Complaints Scheme.

6. You have told me the that:

The FCA does not have the power to retrospectively apply charges it has not consulted on. This applies from the date the fee became due not invoiced.

The FCA believed that the reduced IAR fee of £75 will mean that Principal firms would be more able to pass on, or absorb, the lower fee". On what basis has this assumption been made?

7. I can sympathise with your situation, however your complaint about the IFA fee does relate to the FCA's legislative functions, so the information the FCA Complaints Investigator gave you was correct. Your complaint about this fee falls outside the Complaints Scheme and for those reasons I am unable to investigate this matter for you.
8. In response to my preliminary report, you raised further complaint points about the fee through your advisor. For the same reason as above, I am unable to investigate these points as they fall outside of the Complaints Scheme.
9. I am pleased the FCA have upheld the part of your complaint relating to information you were provided when calling the Supervision Hub in July 2021. It is clear you were not given accurate information and I can appreciate how frustrating this must be.

10. Although the FCA excluded part of your complaint, there may be a debate to be had about the merits of the FCA's approach to fees, as such you may wish to approach your MP about this matter.

My decision

11. I realise you may be disappointed with my decision report, but for the reasons outlined above, I cannot uphold your complaint.

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Complaints Commissioner

14 January 2022